

REMARKS

Unity of Invention

Claims 1-51 are pending and are subject to a Unity of Invention restriction under 35 U.S.C. §§ 121 and 372 for reciting inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1. (*See*, Office Communication, at page 2). Applicants traverse as hereinafter set forth.

For the purpose of examination of the present application, Applicants elect, with traverse, Group II, Claims 20-31.

According to MPEP § 1893.03(d), the Examiner is respectfully reminded that if the Examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable, the nonelected invention(s) should be considered for rejoinder. Any nonelected product claim that requires all the limitations of an allowable product claim, and any nonelected process claim that requires all the limitations of an allowable process claim, should be rejoined. (*See*, MPEP § 821.04 and § 821.04(a)). Any nonelected processes of making and/or using an allowable product should be considered for rejoinder following the practice set forth in MPEP § 821.04(b).

Additionally, according to MPEP § 803, if the search and examination of an entire application can be made without a serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

As such, Applicants respectfully request that the Examiner rejoin at least Groups II and V since they are closely related in subject matter.

Reconsideration and withdrawal of the Unity of Invention Requirement of claims 1-51 are respectfully requested.

Election of Species

The Examiner has additionally imposed an Election of Species because the species recited in the claims allegedly lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Examiner believes the species lack the same or corresponding technical features because each CNP peptide has a different sequence.

For the purpose of examination of the present application, Applicants elect, with traverse, (1) CNP-22, (2) osteoarthritis that is degenerative gonarthrosis, and (3) indomethacin.

According to US practice, Applicants understand that they must elect a single species for further prosecution. However, once the Examiner finds allowable subject matter based upon the single species elected, the Examiner is required to then expand the search to include a reasonable number of additional species. As provided in the M.P.E.P. at § 809.02 and stated by the Examiner:

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR

1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Furthermore, Applicants note that the Examiner has identified the existence of many generic claims. Applicants are aware that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

Although the Examiner has indicated specific generic claims, Applicants believe the Examiner has not identified a novelty-destroying reference which fully discloses the presently claimed special technical feature. Thus, Applicants believe that all of pending claims 1-51 are generic to the presently claimed invention and ultimately should all be examined on their merits in this application.

Therefore, reconsideration and withdrawal of the Species Election are also respectfully requested.

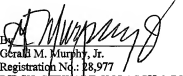
CONCLUSION

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374, at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,


By _____
Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicants